

**Petition for Leave to Convey or Encumber Property
Previously Set Aside as Year's Support**

INSTRUCTIONS

I. Specific Instructions

1. This form is to be used when petitioning for leave to convey or encumber property set aside as year's support, pursuant to O.C.G.A. §53-3-20.
2. This form is prepared on the assumption that the surviving spouse is the petitioner. If this is not the case, modify the form accordingly. The petition may be brought either by a surviving spouse who participated in the award or by the guardian of the property of a minor child who participated in the award.
3. A recent appraisal should be used if available; otherwise, a copy of the most recent ad valorem tax statement should be provided. If the appraised value or tax value is higher than the selling price, explain the discrepancy on an additional sheet, and add a reference to this in paragraph 5 of the petition. In addition, if there is a sales contract, a copy of the contract should be attached to this petition as Exhibit A.
4. Necessity for Filing; Venue
 - i. Pursuant to O.C.G.A. §53-3-19, it is not necessary to obtain probate court approval if the children for whom the award was made who are now sui juris will join in the conveyance or encumbrance, unless at least one of the children for whom the award was made is still a minor.
 - ii. Venue: The petition must be filed in the county where the year's support award was originally granted. O.C.G.A. §53-3-19(b).
5. Method of Service pursuant to O.C.G.A. §53-3-20 is required.
 - i. Adult children for whose benefit the year's support was set apart with known addresses in this state who do not acknowledge service shall be served personally not less than ten (10) days prior to the date set for hearing.
 - ii. Signatures of those who acknowledge service must be attested by a notary public or the clerk of any probate court of this state. An attorney at law may acknowledge service on behalf of his/her client; however, the attorney must certify that he or she currently represents that individual with regard to the pending matter and, in order to comply with O.C.G.A. § 53-11-6, the attorney's signature must be attested as provided above. It is not necessary that all acknowledgements appear on the same page
 - iii. Adult children for whose benefit the year's support was set apart with unknown addresses or residing out of state who do not acknowledge service shall be served by:
 - a. Publication of notice in the legal organ one (1) time not less than ten (10) days prior to the date set for hearing;

- b. Posting of notice at the courthouse not less than ten (10) days prior to the date set for hearing; and
- c. Mailing by first-class mail a copy of the notice to the last known address not less than ten (10) days prior to the date set for hearing.
- iv. A guardian ad litem, who shall accept the appointment in writing, must be appointed to represent any child for whose benefit the year's support was set apart who remains a minor at the time of filing this petition.

II. General Instructions

General instructions applicable to all Georgia probate court standard forms are available in each probate court, labeled GPCSF 1.

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

PETITION FOR LEAVE TO CONVEY OR ENCUMBER
PROPERTY PREVIOUSLY SET ASIDE AS YEAR'S SUPPORT

The petition of _____,
whose physical address(es) is/are _____,
Street City County State Zip Code
and mailing address(es) is/are _____,
Street City County State Zip Code
and being the _____ of the above named decedent, shows to the Court the following:
Relationship

(Note: The petition may be brought either by a surviving spouse who participated in the award or by the guardian of the property of a minor child who participated in the award.)

1.

_____,
(Full name of decedent) First Middle Last
whose place of domicile was _____,
Street City County State Zip Code
departed this life on _____, 20____.

2.

On _____, 20____, the Probate Court of this County awarded a
year's support to the petitioner and the following child(ren) of said decedent:

Name	Current Address	Last Known Address (if current unknown)	Present Age
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

3.

The year's support award included the following described real estate located in _____ County, Georgia (the same being recorded in _____ County Probate Court). A complete legal description of such real property is:

4.

It is necessary for petitioner to (convey) (encumber) said property for the purpose of:

5.

The nature and terms of said (conveyance) (encumbrance) are as follows:

Initial (a) or (b)

- _____ (a) Sale according to the conditions and terms of the contract.
- _____ (b) Encumbrance of the real property to secure a loan in the principal amount of \$_____, the interest rate being _____% per annum, and to be repaid at the rate of \$_____ per month for _____ months; if needed, Petitioner will execute a deed to secure debt for the purpose of securing the loan.
- _____ (c) Attached hereto as Exhibit A is a copy of the contract for, sale, lien, or encumbrance of real estate.
- _____ (d) Attached hereto as Exhibit B is a copy of the most recent ad valorem tax or appraisal showing the current value of the property to be \$_____.

6.

With respect to any child named in paragraph 2 above whose current address is shown as unknown, petitioner certifies that the current address is unknown to petitioner and cannot be easily ascertained, and that the last known address for any such person is listed in paragraph 2.

7.

Of the children named in paragraph 2 above, _____

_____ is/are still under the age of 18, and must have a guardian ad litem appointed to represent him/her/them.

WHEREFORE the petitioner prays in accordance with O.C.G.A. §53-3-20:

1. That a hearing be set on this petition;
2. That a guardian ad litem be appointed to represent the minor children concerned; and
3. That the petition be granted after notice as required by law has been given.

Signature of Attorney
(or petitioner if pro se)

Printed Name

Mailing Address

Telephone Number

State Bar #

VERIFICATION

GEORGIA, _____ **COUNTY**

Personally appeared before me the undersigned Petitioner who, after being duly sworn, state(s) that the facts set forth in the foregoing petition (and the attached exhibits) are true.

Sworn to and subscribed before me this
_____ day of _____, 20_____.

Signature of Petitioner

NOTARY/CLERK OF PROBATE COURT
My Commission Expires _____

Printed Name of Petitioner

Mailing Address

Telephone Number

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

ORDER FOR SERVICE OF NOTICE

The foregoing petition having been read and considered, let notice issue and be served personally upon all children with known addresses in Georgia who are age 18 or over and have not acknowledged service. If there are any children whose current addresses are unknown or outside Georgia who are age 18 or over and have not acknowledged service, then the following notice shall be published one (1) time at least ten (10) days prior to the hearing, and a copy of the notice shall be posted at the Courthouse and mailed by first-class mail to the last known addresses of any such children at least ten (10) days prior to the date set for the hearing.

This _____ day of _____, 20____.

Judge of the Probate Court

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

NOTICE

To: _____
_____ and to whom it may concern:

A petition has been filed seeking an Order of this Court granting leave to (convey) (encumber) certain property heretofore set apart from the estate of the above named decedent as year's support. This is to notify those persons named above who are not required to be personally served that they must file their response to the petition with the Court on _____, 20____, and the persons who are required to be personally served are:

(List children with known addresses who are domiciled in this state.)

and they must file their response by the above date or the tenth (10th) day after they are personally served, whichever is later.

All objections to the petition must be in writing, setting forth the grounds of any such objections. If any objections are filed, a hearing will be (held on _____) (scheduled for a later date). If no objections are filed, the petition may be granted without a hearing.

Judge of the Probate Court

By: _____
Clerk/Deputy Clerk of the Probate Court

Publication date, if necessary: _____

**IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA**

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM

IT IS ORDERED that _____
Name Address Telephone Number

is appointed guardian ad litem for _____,
minor/unborn heir/the unknown heir, and that said guardian ad litem be duly served with a copy
of the foregoing Notice, petition, and notice of this appointment, and that upon said guardian ad
litem's acceptance of the same, said guardian ad litem shall make answer hereto. This
appointment is limited to this proceeding only, and it shall cease when a final order is entered on
this petition.

SO ORDERED this ____ day of _____, 20____.

Judge of the Probate Court

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

ANSWER OF GUARDIAN AD LITEM

I hereby accept the foregoing appointment, acknowledge service and notice of the proceedings as provided by law, and for answer say:

This _____ day of _____, 20____.

Signature of Guardian Ad Litem (GAL): _____

Typed/printed name of GAL: _____

Address: _____

Telephone Number: _____

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

CERTIFICATE OF SERVICE

(Notice should be given to all interested parties and the Personal Representative, if one has been appointed, of the Decedent's estate and the Tax Commissioner for any County in which the Decedent owned property must be listed here.)

I certify that I have on this date mailed, unless otherwise noted, in an envelope with the proper postage affixed thereto for first-class mail delivery copies of the _____
_____ to the following parties at the addresses below:

This _____ day of _____, 20____.

Clerk/Deputy Clerk of the Probate Court

Address

Telephone Number

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

ACKNOWLEDGMENT OF SERVICE AND CONSENT BY ADULT CHILDREN

I hereby acknowledge service of the petition of _____
for leave to sell or encumber the property set apart as year's support to the persons shown in the
petition. I am over 18 years of age and suffer no mental disability. I hereby consent to the
granting of the petition, and I agree the petitioner should be allowed to make the (encumbrance)
(conveyance).

SPOUSE AND ADULT CHILDREN SIGNATURES

Sworn to and subscribed before me this _____
_____ day of _____, 20____. Signature _____

NOTARY/ CLERK OF PROBATE COURT Printed Name and Relationship
My Commission Expires _____

Sworn to and subscribed before me this _____
_____ day of _____, 20____. Signature _____

NOTARY/ CLERK OF PROBATE COURT Printed Name and Relationship
My Commission Expires _____

Sworn to and subscribed before me this _____
_____ day of _____, 20____. Signature _____

NOTARY/ CLERK OF PROBATE COURT Printed Name and Relationship
My Commission Expires _____

IN THE PROBATE COURT
COUNTY OF _____
STATE OF GEORGIA

IN RE: ESTATE OF _____)
)
) **ESTATE NO.** _____
DECEASED)

ORDER

The petition of _____, praying for leave to (convey) (encumber) certain real property heretofore awarded from the estate of the above decedent as year's support, having been read and considered, and it appearing to the Court that notice was duly issued and served as required by law; it further appearing that a guardian ad litem was duly appointed to represent the interests of the minor child(ren) _____ still under the age of 18, who has made answer thereto approving the proposed transaction; it also appearing that no objections have been filed in this matter, and that it is necessary and in the best interests of the minor child(ren) _____ still under the age of 18 that said real property be (conveyed) (encumbered) as set forth in the petition;

IT IS ORDERED that said petition to (convey) (encumber) be, and the same is hereby GRANTED.

This ____ day of _____, 20____.

Judge of the Probate Court